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March 21, 2019

District Judge Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Sharpe v. A & W Concentrate Company et al  
1:19-cv-00768-BMC

Dear District Judge Cogan:

This office represents the plaintiff in the above action. In response to your Honor's Order to Show Cause, March 21, 2019, as to whether sanctions should be imposed for plaintiff's failure to appear at the Initial Status Conference, plaintiff acknowledges the failure to appear, requests that sanctions should not be imposed and apologizes to the Court. Plaintiff shall not offer "good cause" as such cause – to not follow the Court's Orders – does not exist when an attorney is an officer of the Court. This was a regrettable mistake which will not happen again and the undersigned requests the Court to not impose sanctions.

Federal Rule of Civil Procedure 16 permits the Court to issue any just order for the failure to appear at a pretrial conference or failing to obey a scheduling or other pretrial order. Fed. R. Civ. P. 16(f)(1)(A) and (B); *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-46 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980). Plaintiff submits that the failure to appear was not in bad faith and while bad faith is not required for the imposition of sanctions, plaintiff requests it be considered. *United States v. Stoneberger*, 805 F.2d 1391, 1393 (9th Cir. 1986).

After the complaint was filed, counsel did not closely monitor this docket, as should have been done. The intention was to effect service within the allotted timeframe – no later than Thursday, May 9, 2019. Fed. R. Civ. P. 4(m); 6(a)(1)(A)-(B) (excluding the date triggering the period and counting intermediate weekends). Presently, plaintiff has not been contacted by any attorney representing defendants. Nonetheless, this is not an excuse or justification.

Plaintiff shall effect service as soon as practical following submission of this letter. The undersigned requests that the Initial Status Conference be held next week or at any time the Court sets. Plaintiff shall appear and if defendants have been served or made aware of such conference, their appearance will be requested as well. The undersigned apologizes for the present failure and is determined it will not happen again. Thank you.

Respectfully submitted,

/s/ Spencer Sheehan  
Spencer Sheehan

Certificate of Service

I certify that on March 21, 2019, I served the foregoing by electronically filing and/or mailing (first-class mail) same, to the persons or entities indicated below, at their last known address of record (blank where not applicable).

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☐ CM/ECF

☐ First-Class Mail

/s/ Spencer Sheehan  
Spencer Sheehan